The Court of Appeals over opposition of petitioner then extended the June 4 injunction pending appeal or its further order (R. 72). Petitioner does not now raise any question as to that order. However, upon final hearing the Court of Appeals concluded that the injunction of the district court of June 4 "will be continued in effect until final disposition of the action by that court" (R. 86). This direction deprives petitioner of an opportunity to be heard on all of those matters essentially relating to the injunctive process such as the validity of his defenses, the balance of convenience, the nature, extent and remediability of the possible damage to plaintiff, and similar matters.

In addition, the action of the Court of Appeals in ordering the extension of the injunction has the effect of ordering the district court [5] to enter an interlocutory injunction unsupported by findings of fact and conclusions of law, in defiance of Rule 52(a) of the Federal Rules of Civil Procedure. Thus, this Court is left to speculate as to what facts, if any, exist to support the interlocutory injunction.[6] If the district court had done what it is now ordered to do, its action would have been

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[5] It is not clear whether the Court of Appeals has adopted the injunction of the district court and extended it as its own process or whether it has ordered the district court to extend the injunction. It is assumed that the statement in the opinion is to be regarded as a direction to the district court, rather than a retention of jurisdiction by the Court of Appeals over the preliminary injunction, while the rest of the case finds its way through the district court.

[6] The Court of Appeals made no findings of its own.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 755

JULIUS A. KRUG, DEPARTMENT OF INTERIOR,
PETITIONER

v.

SHERIDAN-WYOMING COAL COMPANY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of Julius A. Krug, prays that a writ of certiorari issue to review the judgment entered on January 31, 1949, by the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 77-86) is reported at 172 F. 2d 282. Its opinion on a prior appeal (R. 1-4) is reported at 168 F. 2d 557.

JURISDICTION

The judgment of the Court of Appeals was entered on January 31, 1949 (R. 87). The juris-

5. Not only is resolution of the questions previously discussed important in administration of federal statutes generally but the case is of special importance to the proper administration of the Mineral Leasing Act. The decision below means that all persons who have received coal leases since 1934 have standing to attack in court the issuance of new leases which might possibly result in competition with existing mines and to prevent the issuance of leases pending conclusion of the litigation. While the extent of injury cannot be estimated, the delays incident to such litigation would obviously seriously interfere with the leasing of Government lands. Moreover, the manner in which the court below dealt with this case raises questions of importance in the administration of justice, particularly the extent to which an appellate court should interfere in matters of discretion confided to the district courts.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

APRIL 1949.

diction of this Court is invoked under 28 U. S. C. sec. 1254(1).

QUESTIONS PRESENTED

1. Whether a regulation of the Secretary of the Interior which merely instructed his subordinates as to the criteria which should govern them in making recommendations as to coal leases upon the public domain created property rights in a lessee of public coal lands which gave it sufficient standing to enjoin the leasing of other public lands to a third party.

2. If so, whether one Secretary of the Interior has authority to bind or reduce by contract the discretionary duty and authority vested by statute in him and his successors with respect to the execution of mineral leases.

3. Whether an officer of the United States may be enjoined from leasing government lands on the ground that such act would constitute a breach of a contract with the United States not to lease such lands.

4. Whether the Court of Appeals, in reversing an order denying leave to file an amended complaint, so abused its discretion in directing continuance of a temporary injunction until final disposition of the action by the trial court as to warrant invocation of this Court's supervisory powers.

APPENDIX

Relevant portions of the Mineral Lands Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U. S. C. secs. 181 *et seq.*, in effect at the time of the departmental decisions, are as follows:

SEC. 1 [30 U. S. C. 181]. * * * deposits of coal * * * and lands containing such deposits owned by the United States * * *, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act * * *.

SEC. 2 [30 U. S. C. 201]. * * * the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant: * * * where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits

STATUTES AND REGULATION INVOLVED

43 C. F. R. sec. 193.3 provides:

> *Showing required that an additional coal mine is needed.* The General Land Office [1] will make favorable recommendation that leasing units be segregated and that auctions be authorized only in cases where there has been furnished a satisfactory showing that an additional coal mine is needed and that there is an actual need for coal which cannot otherwise be reasonably met.

Provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, are printed in the Appendix, pp. 17-23, *infra*.

STATEMENT

The judgment sought to be reviewed (1) reverses the trial court for refusing to allow respondent to file an amended complaint seeking to enjoin petitioner from granting to the Big Horn Coal Company a lease to mine coal from public lands under the Mineral Leasing Act of 1920, 41 Stat. 437, 30 U. S. C. sec. 181, *et seq.*, (2) directs the trial court to allow the filing of that complaint, and (3) directs continuance of a temporary injunction until final disposition of the case by the trial court.

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[1] Effective July 16, 1946, the General Land Office was abolished and its functions transferred to the Bureau of Land Management by Reorganization Plan No. 3 of 1946 (11 F.R. 7875, 7876; 7776).

The complaint in question (R. 10-15, 49-51) may be summarized as follows:

Respondent, a lessee of public lands under the Mineral Leasing Act of 1920, is engaged in the mining and distribution of sub-bituminous coal. The Big Horn Coal Company carries on a similar business in competition with respondent, its coal being obtained from mines under lease from the State of Wyoming. On December 18, 1943, it applied for a coal lease of federal lands adjoining the State lands already under lease and later in 1945 applied for additional lands. At the public auction on January 16, 1946, the Big Horn Company was the only bidder. However, a lease was not awarded at that time because of protests by respondent and others on the ground that a regulation promulgated by the Secretary and published as 43 C. F. R., sec. 193.3, prohibited the leasing of the lands involved except on finding that an additional coal mine was needed.

After a hearing the Under Secretary of the Interior approved a decision of the Bureau of Land Management dismissing the protests. This decision stated that the regulation invoked did not apply where, as in the case of the Big Horn Company, additional lands were sought for an existing mine whose deposits were becoming exhausted. A motion for rehearing was denied by the Under Secretary, and the Secretary denied a motion for exercise of supervisory power.

This case has been through the lower courts twice. It was originally filed on November 4, 1947 (R. 10-15), at which time a temporary restraining order was issued *ex parte*. On November 17, 1947, the complaint was dismissed on the grounds that the plaintiff had no standing to sue, that the Secretary's power to grant coal leases is discretionary and not subject to judicial review and that the Regulation is a declaration of policy which does not diminish or restrict the Secretary's discretionary powers (R. 39-43). The temporary restraining order was continued until November 21, 1947, and the Court of Appeals on December 4, 1947, granted an application for a temporary injunction pending disposition of an appeal from the dismissal (R. 6).

On March 29, 1948, the judgment of dismissal was affirmed on the ground that respondent, as a member of the coal industry in general, had no standing to sue (R. 1-4), 168 F. 2d 557. However, although the parties had argued the merits of the matter, the appellate court declined to decide whether a lessee of federal coal lands could maintain the suit because of its view that the original complaint did not allege that respondent was in this category. But thereafter it amended its judgment so as to permit the trial court to entertain a motion for leave to amend the complaint (R. 6).

Upon remand a temporary injunction was entered on June 4, 1948, and on July 6, 1948, plain-

at any one time when market conditions are such that the lease can not be operated except at a loss.

SEC. 27 [30 U. S. C. 184]. No person, association, or corporation, except as herein provided, shall take or hold coal * * * leases or permits during the life of such leases in any one State, exceeding in the aggregate acreage two thousand five hundred and sixty acres * * *. No person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of minerals hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. * * * Except as in this Act provided, if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatso-

tiff's motion for leave to file an amended complaint was denied and the temporary injunction continued for ten days (R. 63). On July 16, 1948, the court below continued the temporary injunction in effect pending final disposition of the court (R. 72). On January 31, 1949, the Court of Appeals entered the judgment which petitioner seeks to have reviewed.[2]

At the end of its opinion, the Court of Appeals summarized its reasoning (R. 84-86). In paraphrase, it was as follows: The regulation (43 C. F. R. sec. 193.3) was valid because the Secretary was empowered to withdraw the lands from leasing and therefore could impose conditions upon which he would issue leases. Since the regulation was published in the Code of Federal Regulations, it had the force of a statute until modified or repealed. Rightly construed and as it had been construed until the Big Horn application, it meant that leases would not be

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[2] Respondent had both taken an appeal as of right and applied for allowance of a special appeal under Section 17-101, District of Columbia Code. On September 17, 1948, the special appeal was denied as was a motion to dismiss the appeal as of right (R. 74-75). It is believed that this latter order was erroneous because an order denying a motion for leave to file an amended complaint is discretionary and not final and appealable (*Bank of Columbia* v. *Sweeny*, 1 Pet. 567, 569; *Dieterich* v. *Dieterich*, 48 App. D. C. 356, 357; *Kulesza* v. *Blair*, 41 F. 2d 439 (C.A. 7), certiorari denied, 282 U.S. 883), and the fact that the order was entered after final judgment rather than before would not seem to change its nature (*United States* v. *Muschany*, 156 F. 2d 196 (C.A. 8)). However, we do not urge that the judgment should be reversed on this ground since the court below had power to entertain an appeal under Section 17-101 of the District of Columbia Code of all interlocutory orders and a reversal on that ground would simply prolong this litigation if, as would be probable, the amended complaint were filed as a new suit.

issued in the absence of a showing that an additional coal mine was needed. Since petitioner's lease in its introductory clause recited that it was made subject to the Leasing Act and since 43 C. F. R. sec. 193.3 was valid under that Act, the regulation was one of the conditions of the lease and that contract conferred and was intended to confer on respondent the right to be one of a limited number of lessees and, as possessor of that valuable right, respondent could sue for its protection. The Secretary's wide discretion under the Leasing Act does not allow him "to violate or ignore an existing departmental regulation which established one of the conditions upon which he entered into a contract of lease." (R. 86.)

Judge Edgerton, who had concurred in the result on the first appeal, this time dissented. His succinct opinion forcibly states the petitioner's position. Judge Edgerton said (R. 86):

> Our former judgment was that the District Court might grant or deny a motion to amend the complaint "as in its discretion seems proper." That judgment became final long ago. This court now reverses it and requires the District Court to grant the motion. This reversal seems to me not only inconsistent with orderly procedure but probably beyond our authority.
>
> I agree with the District Court that the proposed amendment of the complaint would add nothing material. On the former appeal we did not undertake to decide that question. I think the Department regulation on which this

court now relies was not intended to be, did not appear to be, and was not a term or condition of appellant's lease. Its apparent purpose and effect were not to increase the rights of lessees, but to limit the expectations of applicants for leases. It did not purport to control the discretion of the Secretary in making leases, but only that of his subordinates in making "favorable recommendations." Moreover the United States is a necessary party when suit is brought to prevent the leasing of its lands.

SPECIFICATIONS OF ERROR

The Court of Appeals erred:

1. In holding that respondent had standing to sue to enjoin the Secretary of the Interior from making a lease of federal coal lands.

2. In instructing the district court to deny petitioner's motion to dismiss insofar as it rests upon the ground that respondent has no standing to sue.

3. In holding that there is jurisdiction to enjoin the Secretary of the Interior from executing a lease of public lands of the United States.

4. In reversing the order of the district court.

5. In ordering continuance of the injunction until final disposition of the case by the district court.

REASONS FOR GRANTING THE WRIT

1. Having noted that the regulation was issued under authority of the Mineral Leasing Act and

that the lease to respondent made reference to that Act, the court below concluded that the regulation was in effect incorporated into the lease. On that premise, it held that the lease contained an agreement that the United States would limit future coal-mining leases of the public lands to cases in which there was a satisfactory showing that an additional coal mine was needed and hence that respondent had standing to maintain this suit. This holding as to respondent's standing to sue is erroneous and raises questions of importance in the administration of the Government's program for leasing of coal mines and other resources.

It ignores the language and purpose of the regulation which, as Judge Edgerton said (R. 86), "did not purport to control the discretion of the Secretary in making leases, but only that of his subordinates in making 'favorable recommendations' ". Since the regulation indicated the standards to be followed by those making leasing recommendations, it was published for the information of possible applicants for leases. At most, it constituted simply a declaration of policy which the Secretary desired his subordinates to apply. Cf. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 128-129. It gave no assurance either that the policy would continue or that it was binding in all cases upon the Secretary or any of his successors. However respondent might be hurt by a change, it had no right, enforceable judicially, to have the policy continued. *Reichelderfer* v. *Quinn*, 287 U. S. 315, 319;

Tennessee Power Co. v. *T. V. A.*, 306 U. S. 118, 141. Any implication that merely because the regulation existed at the time respondent's lease was executed the Secretary was contracting that the issuance of new leases would be indefinitely circumscribed thereby is negatived by the rule that grants of franchises and special privileges are always to be construed most strongly against the donee and in favor of the public. "A contract binding the State is only created by clear language, and is not to be extended by implication beyond the terms of the statute." *Williams* v. *Wingo*, 177 U. S. 601, 603; *Northern Pacific R. Co.* v. *United States*, 330 U. S. 248, 257; *Larson* v. *South Dakota*, 278 U. S. 429, 435; *Water Company* v. *Knoxville*, 200 U. S. 22, 31-33; *Covington* v. *Kentucky*, 173 U. S. 231, 239; *Turnpike Co.* v. *Illinois*, 96 U. S. 63, 68-69; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 546-548.

Thus, even if an Act of Congress had been enacted in the terms of the regulation, no legal rights would have been vested in respondent. Since the policy was stated simply in a regulation promulgated by the Secretary under the Mineral Leasing Act, the absence of standing to sue is even clearer. The Secretary's discretion in the administration of these public lands is a continuing one. The regulation does not purport to relinquish this discretion to amend or revoke the regulation or, as here, to determine the factual situations to which it should

apply.[8] There is nothing in the regulation which indicates an intention to abdicate his discretionary duties and to have the matter determined solely on the basis of the regulation, with court supervision of the determinations thereunder.

2. As construed by the court below, the regulation is invalid because it exceeds the statutory authority granted by the Mineral Leasing Act. The Act vests in the Secretary the discretionary power to determine whether or not a lease should issue. 30 U. S. C. sec. 201. This was by its nature a continuing authority and duty which the Secretary was not empowered to abdicate. Cf. *Wilbur* v. *United States*, 281 U. S. 206, 216-217. The court below reasoned that the Secretary "had power to withdraw lands from leasing and so could impose the conditions upon which he would lease" (R. 84). But the power to withdraw lands does not carry with it an authority to create property interests in persons benefited by the withdrawal. *Sioux Tribe* v. *United States*, 316 U. S. 317; *Ute Indians* v. *United States*, 330 U. S. 169. Under the decision below, the Secretary has created in respondent a right to restrict the leasing of any public lands which might be used to compete with respondent. Plainly the Mineral Leasing Act did not authorize

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[8] As demonstrated by the three departmental opinions dealing with this matter, the Secretary's conclusion under the circumstances of this case was perfectly reasonable and not arbitrary and capricious. None of the rulings in the earlier cases referred to by the court below as the fourteen years administrative construction involved a situation where denial of the lease would put a going business out of operation.

the creation of such a negative easement in the public domain. Rather than vesting the Secretary with unlimited discretion as to terms and conditions which should be included in leases, the Act itself specifies what those conditions shall or may be, expresses a strong policy against use of the public lands in restraint of trade and limits the acreage in which a single lessee shall have an interest. 30 U. S. C. 181, 184, 186, 187, 207. Nowhere in the Act is there even a hint that the Secretary is authorized to barter away his discretion to determine whether lands shall be leased or by means of a negative covenant to confer upon a lessee an interest in public lands beyond the tract described in his lease.

3. The avowed basis for the conclusion below is that the court is exercising jurisdiction to enjoin threatened breach of a contract of the United States (R. 85-86). However, specific performance of Government contracts may not be accomplished by indirection by enjoining a government officer from performing the act which it is alleged will constitute a breach of contract, since such a proceeding constitutes a suit against the United States. *Mine Safety Co.* v. *Forrestal*, 326 U. S. 371; *Wells* v. *Roper*, 246 U. S. 335; *Goldberg* v. *Daniels*, 231 U. S. 218; *In re Ayers*, 123 U. S. 443, 503; see *Goltra* v. *Weeks*, 271 U. S. 536, 546; cf. Brief for the Petitioner, *Larson* v. *Domestic and Foreign Commerce Corporation*, No. 31, now pending decision, pp. 28-32, 39. Since title to and

possession of the property is concededly in the United States, this suit cannot be justified on the ground that property of the plaintiff is being unlawfully withheld by a government agent or such agent is threatening to trespass on plaintiff's property. See *Land* v. *Dollar*, 330 U. S. 731, 737, 738. Hence, as the dissenting judge concluded (R. 86), the United States is surely a necessary party to this suit.

4. Other questions of importance are presented by the decision of the court below, which continues in effect "until final disposition of the action" by the District Court the temporary injunction originally issued by that Court on June 4, 1948. The district court entered this injunction with the consent of both parties to give it time to consider respondent's motion for leave to file its amended complaint. (R. 63.) There was then no hearing on the question whether an injunction *pendente lite* should be granted and, since the order was entered by consent, no findings of fact or conclusions of law of any kind were made.[4] When the court denied the motion for leave to amend, it extended the injunction of June 4, 1948, for ten days. (R. 63.)

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[4] At the only hearing on an application for such relief which took place before the first appeal, the injunction was denied by the District Court and no appeal from that action was taken. The findings of fact and conclusions of law made by the Court following that hearing (R. 39-41) plainly require the refusal of injunctive relief. Although the motion for leave to file the amended complaint was accompanied by a motion for a preliminary injunction, the court concluded that since leave to file the amended complaint had been denied, the motion for a preliminary injunction was not properly before it.

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sec. 29	69
sec. 30	43, 69
sec. 32	70
sec. 37	70
sec. 39	43, 70
28 U.S.C. sec. 1292	59
sec. 1651	59, 60
District of Columbia Code, sec. 17-101	10
MISCELLANEOUS:	
Circular No. 1318, February 1, 1934, 54 L. D. 352	26
Letter from the Acting Secretary of the Interior to the Chairman of the House Committee on Public Lands, dated June 9, 1947, U.S. Code Cong. Serv. 80th Cong., 2d sess., p. 1642	34
Federal Rules of Civil Procedure:	
Rule 52(a)	59
Rule 65(a)	59
Rule 65(b)	58
Regulation of the Secretary of the Interior, 43 C.F.R., sec. 193.3	3, 5, 11, 13, 20
Reorganization Plan No. 3 of 1946, 11 F.R. 7575, 7876, 7776	3

plainly reversible error for want of supporting findings and conclusions. It is submitted that the Court of Appeals has no power to order the district court to disregard the rules of procedure promulgated by this Court for the governance of district courts.

Moreover, the direction of the Court of Appeals ties the hands of the district court throughout the course of the litigation. It leaves the district court without discretion or power to modify or to dissolve the injunction *pendente lite* regardless of how circumstances may change with the passage of time. It would also seem to leave petitioner without any possibility of relief if circumstances should change. The District Court would be required by the present decision to deny any application for modification or dissolution and any appeal from its action would probably be fruitless since the Court of Appeals could hardly reverse for obedience of its own command. The Court of Appeals would seem to lack power to alter its present judgment, unless the need for modification or dissolution of the injunction could be brought before it by an appropriate proceeding before the expiration of the present term of that Court. Hence, it is submitted that the extension of the interlocutory injunction until final disposition of the action constitutes such a clear abuse of discretion as to warrant invocation of this Court's supervisory power. Cf. *Landis* v. *North American Co.*, 299 U. S. 248, 257.

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 60

JULIUS A. KRUG, DEPARTMENT OF INTERIOR,
Petitioner

v.

SHERIDAN-WYOMING COAL COMPANY, INC.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinions of the Court of Appeals (R. 96-106) are reported at 172 F. 2d 282. Its opinion on a prior appeal (R. 30-34) is reported at 168 F. 2d 557. The opinions of the district court are found at pages 16-18 and 86 of the Record.

JURISDICTION

The judgment of the Court of Appeals was entered on January 31, 1949 (R. 106-107). The peti-

in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter, the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit: * * * no lease of coal under this Act shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated * * *.

SEC. 3 [30 U. S. C. 203]. * * * any person, association, or corporation holding a lease of coal lands or coal deposits under this Act may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.

SEC. 4 [30 U. S. C. 204]. * * * upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked

tion for a writ of certiorari was filed on April 29, 1949, and was granted on October 10, 1949 (R. 109). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether a regulation of the Secretary of the Interior which merely instructed his subordinates as to the criteria which should govern them in making recommendations as to new coal leases upon the public domain created property rights in lessees of public coal lands which gave them standing to enjoin the leasing of other public coal lands to a third party.

2. Whether as construed by the court below the regulation is invalid because one Secretary of the Interior does not have authority to bind the Government to a single policy in disposing of its coal lands or to reduce by contract the discretionary duty and authority vested by statute in him and his successors with respect to the execution of new mineral leases.

3. Whether an officer of the United States may be enjoined from leasing Government lands on the ground that such act would constitute a breach of a contract with the United States not to lease such lands.

4. Whether the Court of Appeals, in reversing an order denying leave to file an amended complaint, so abused its discretion in directing contin-

out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.

SEC. 7 [30 U. S. C. 207]. * * * for the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than $1 per acre for each and every year thereafter during the continuation of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. * * * the Secretary of the Interior may permit suspension of operation under such lease for not to exceed six months

uance of a temporary injunction until final disposition of the action by the trial court as to warrant invocation of this Court's supervisory powers.

STATUTE AND REGULATION INVOLVED

Relevant provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U. S. C. 181 *et seq.*, are printed in the Appendix, *infra*, pp. 65-71. 43 C. F. R. sec. 193.3 provides:

> *Showing required that an additional coal mine is needed.* The General Land Office[1] will make favorable recommendation that leasing units be segregated and that auctions be authorized only in cases where there has been furnished a satisfactory showing that an additional coal mine is needed and that there is an actual need for coal which cannot otherwise be reasonably met.

STATEMENT

1. This case has been through the lower courts twice. Suit was originally filed on November 4, 1947, to enjoin the Secretary of the Interior from granting to the Big Horn Coal Company leases to mine coal from public lands (R. 19-23). Respondent's theory was (a) that a regulation of the Secretary of the Interior (43 C. F. R. sec. 193.3—directing the General Land Office to "make fav-

[1] Effective July 16, 1946, the General Land Office was abolished and its functions transferred to the Bureau of Land Management by Reorganization Plan No. 3 of 1946 (11 F.R. 7875; 7876; 7776).

orable recommendation * * * [for issuing a lease of public coal lands] * * * only in cases where there has been furnished a satisfactory showing that an additional coal mine is needed and that there is an actual need for coal which cannot otherwise be reasonably met"—precluded the Secretary from issuing leases of public coal lands except those as to which there could be shown an actual need which could not otherwise be reasonably met; (b) that the leases applied for by the Big Horn Coal Company would be void and illegal because there had been and could be no finding of actual need as required by the regulation; and (c) that respondent, which claimed already to have been injured by competition from the Big Horn Coal Company's operations on state-owned lands, was within a "protected class" established by the regulation and would be irreparably injured by the granting of leases to the Big Horn Coal Company to operate on federally-owned lands (R. 22).

The detailed facts, as they appear in the original complaint and exhibits attached thereto (R. 19-23, 57-84), may be summarized as follows:

Respondent is engaged in the mining and distribution of sub-bituminous coal (R. 19). The Big Horn Coal Company carries on a similar business in competition with respondent, its coal being obtained from mines under a lease from the State of Wyoming dated December 2, 1943, which was as-

ever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal * * * entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

SEC. 29 [30 U. S. C. 186]. * * * any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. * * *

SEC. 30 [30 U. S. C. 187]. * * * The lessee may, in the discretion of the Secre-

signed to it by the Big Horn Construction Company on January 6, 1944, shortly after the incorporation of the coal company (R. 19-20). Prior thereto, on December 18, 1943, the Big Horn Coal Company, then in the process of being incorporated, filed an application for a coal lease of federal lands adjoining the state lands already under lease, and later in 1945 applied for additional lands (R. 20, 63). On January 16, 1946, after publication of notice according to statutory requirement, the lands were offered for coal leasing purposes at public auction and Big Horn was the only bidder (R. 20, 59). However, a lease was not awarded at that time because of protests filed by respondent and others on the ground that the regulation of the Secretary published as 43 C. F. R. sec. 193.3 (*supra*, p. 3) prohibited the leasing of the lands involved except on a finding that an additional coal mine was needed (R. 59).

After hearing, the Bureau of Land Management dismissed the protests on the ground that the regulation requiring a showing of a need for an additional mine did not apply where, as in the case of the Big Horn Company, additional lands were sought for an existing mine whose deposits were becoming exhausted (R. 20-21, 59-61). The Under Secretary approved this decision (R. 61).

Thereafter, respondent moved for a rehearing within the Department on the ground that the case should be treated as one in which issuance of the

tary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain * * * such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare * * *.

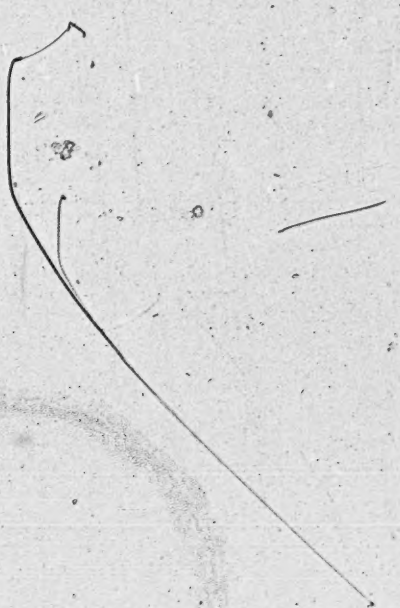
SEC. 32 [30 U. S. C. 189]. * * * the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act * * *.

SEC. 37 [30 U. S. C. 193]. * * * the deposits of coal * * * herein referred to, in lands valuable for such minerals * * * shall be subject to disposition only in the form and manner provided in this Act * * *.

SEC. 39 [30 U. S. C. 209]. The Secretary of the Interior for the purpose of encouraging the greatest ultimate recovery of coal, oil, or gas and in the interest of conservation of natural resources is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion

federal lease would create a new mine whose production would tend to supplant that already existing in the competitive area; it asserted that Big Horn had started a new mine on the state-owned lands knowing that those coal deposits were inadequate and was merely using the lease of the state-owned lands for the purpose of avoiding or evading the effect of the regulation (R. 62-63). The Under Secretary denied this motion, stating that respondent's position ignored events subsequent to Big Horn's application which showed that, without using federal lands, Big Horn had successfully opened a large mine and would be driven out of business if the regulation were applied as urged by respondent. The Under Secretary pointed out that to apply the regulation in such a case would be contrary to its purpose because, as appeared from past decisions, it was promulgated not only because of public interest in maintaining a healthy bituminous coal industry by avoiding overproduction, but also because of the interest of the Government in the conservation and fruitful exploitation of its mineral properties; that the Government as a proprietor of coal lands on the public domain was in no position to control the industry by its policy in the disposition of federal coal lands, however wise; and that while it would endeavor to prevent recurrence of the past devastating conditions of overproduction in the industry, it would not do so at the expense of an arbitrary termination of a

thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. * * *



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competing coal business which had been successfully established on non-federal lands, and was, at the time its applications for federal leases were heard, running out of coal reserves, since one of the purposes of the regulation was to assist in keeping in operation mines already in existence (R. 64-66). The Secretary of the Interior denied a motion for exercise of his supervisory power and refused to reverse the decision of his subordinates in this matter. He pointed out that whatever his decision might have been at the date Big Horn first applied for a lease, at the time the applications were acted upon the Big Horn Company had successfully established a large, going business enterprise on state-owned land without resort to the use of federal coal lands (R. 66-70).[2]

Upon these facts, respondent alleged in its complaint that issuance of the leases to Big Horn would be "void and illegal" because there was, and could be, no finding "of the regulatory requisites in the premises" (R. 22).

Petitioner moved to dismiss the complaint on the grounds that it did not state a cause of action, that

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[2] The Secretary pointed out (a) that Big Horn's state-owned coal lands were next to the federal coal lands which it sought to lease, and (b) and that the state coal was insufficient to supply the company's needs if it were to remain in business (R. 66-69). The Under Secretary's decision likewise stated that Big Horn needed the "coal deposits of the United States", and the granting of a lease on the adjacent federal coal lands "would accommodate the expansion of an existing mine which is running out of coal reserves." (R. 64.)